REMARKS

The above amendments to the above-captioned application along with the following remarks are being submitted as a full and complete response to the Office Action dated August 4, 2009 (U.S. Patent Office Paper No. 20090803). In view of the above amendments and the following remarks, the Examiner is respectfully requested to give due reconsideration to this application, to indicate the allowability of the claims, and to pass this case to issue.

Status of the Claims

As outlined above, claims 29 and 30 stand for consideration in this application, wherein claim 29 is being amended to improve form.

All amendments to the application are fully supported therein. For example, the amendments to the claims are supported by paragraphs [0012], [0047], [0062], [0067], [0071], and [0085], as well as by Figures 13, 23, and 24. Applicants hereby submit that no new matter is being introduced into the application through the submission of this response.

Prior Art Rejections

The Examiner rejected claims 29-30 under 35 U.S.C. §103(a) as being unpatentable over Goldszmidt (U.S. Patent No. 7,054,943) in view of Brichta (U.S. Patent No. 5,864,483) and further in view of Chen (U.S. Patent No. 5,812,780). Applicants have reviewed the above-noted rejections, and hereby respectfully traverse.

As outlined above, claims 29 and 30 remain of record. A proper obviousness rejection requires establishing that the prior art references, when combined, teach or suggest all of the claim limitations. MPEP §2143. Accordingly, Applicants respectfully submit that Goldszmidt, either alone or in combination with Brichta and/or Chen, fails to teach, suggest, or disclose each and every limitation of claims 29 and 30. For example, none of the cited references teach or suggest "urging a user to input...a requested load condition of computers allocated to the user that includes at least a throughput ratio of output transactions to input transactions...of the computers allocated to the user" as required by independent claim 29. Rather, Goldszmidt contrastingly teaches that "[a] method (and system) for managing and controlling allocation...of resources based on a guaranteed amount of resource and additional resources...includes dynamically allocating server resources for a plurality of customers, such that the resources received by a customer are dynamically controlled and the customer receives a guaranteed minimum amount of resources as specified under a service level

agreement (SLA)" (abstract) that uses "a service level metric, the amount of allocated resources, and **the inbound traffic rate, for defining the state of the current service level** (M,N,R) for each customer" (col. 2, ll. 24-27) to thereby "support the (minimum, maximum) server resource-based service level agreements for a plurality of customers." (Col. 2, ll. 13-15) (emphasis added). Goldszmidt further explains that "a general service level agreement (SLA) on a server resource for a customer" is defined merely by "the guaranteed minimum amount of server resources (e.g., the number of servers),...the upper bound on the amount of server resources that a customer may want to obtain when free resources are available, and...a service level metric M that is used in controlling the allocation of resources beyond the minimum for each i-th customer" (Col. 3, ll. 1-11). Goldszmidt provides as examples of bounds for service level metrics "(1) the bound on the server resource utilization ...; (2) the bound on the average server response time...; and (3) the bound on the server response time percentile" (Col. 3, ll. 30-34). Defining a service level agreement merely according to a minimum and maximum amount server resources and service level metric bounds based on resource utilization and response time that is used in controlling the allocation of resources beyond the minimum, as described in Goldszmidt, clearly does not involve any **urging a user to input a requested load condition** of computers allocated to the user that includes at least **a throughput ratio of output transactions to input transactions** of the computers allocated to the user, as required by claim 29.

Furthermore, Brichta contrastingly describes a system for **monitoring business service delivery or product manufacturing** that "includes an interface (12, 18) which can receive criteria information (14) specifying an unacceptable level for services or products." (Abstract; col. 1, ll. 35-36) (emphasis added). Brichta explains that, within the system, a "[r]eceiver 22 may also function to link or relate services information 20 and statistical information 21 received or generated at receiver 22 with criteria information 14 stored in criteria memory 16....Consequently, specific occurrences of services and the related statistical information can be associated with the customer for which the service is performed. [R]eceiver 22 may function to prompt a user of system 10 to input suitable criteria information 14." (Col. 8, ll. 13-27). Brichta also provides that "[t]hese criteria may relate to, for example, processing time, response time, percentage of transaction or items processed, or any other suitable criterion for a product or service. As the provider manufactures, distributes, performs, delivers or otherwise provides the services or products, information relating to each occurrence of manufacture, distribution, performance, or delivery is collected

and processed to generate descriptive statistical information....For each criterion, the statistical information may further specify whether the products or services manufactured, distributed, performed, delivered or otherwise provided are approaching unacceptable levels. Consequently, the provider can take appropriate action if necessary to prevent or substantially minimize the impact should the products or services exceed the unacceptable levels. (Cols. 2-3, ll. 67-17). Prompting a customer to input criteria for monitoring business service delivery or product manufacturing, as described in Brichta, clearly does not involve any urging of a user to input **a requested load condition of computers allocated** to the user that includes at least **a throughput ratio of output transactions to input transactions of the computers** allocated to the user, as required by claim 29.

Moreover, Chen contrastingly describes a "[m]ethod and system for assessing the performance of a server application that acquires performance information from the perspective of a **simulated user**" in which "actual user behavior is modeled so that accurate determinations can be made as to **the number of users a given server application can adequately support**." (Abstract) (emphasis added). In particular, Chen provides that "weighted average response time can then be used as a threshold value to determine the total number of users a server application can adequately support." (Abstract). Modeling behavior of simulated users to determine a number of users a given server application can adequately support, as described in Chen, clearly does not involve any **urging of a user to input a requested load condition of computers allocated to the user that includes at least a throughput ratio of output transactions to input transactions** of the computers allocated to the user, as required by claim 29.

Accordingly, none of the cited references teach or suggest "urging a user to input...a requested load condition of computers allocated to the user that includes at least a throughput ratio of output transactions to input transactions...of the computers allocated to the user" as required by claim 29. For at least this reason, claim 29 is patentable over the cited references.

As another example, none of the cited references teach or suggest "monitoring said throughput ratio of output transactions to input transactions...of the computers currently allocated to the user to compare the monitored throughput ratio with the requested load condition" as required by claim 29. Rather, as described above, Goldszmidt contrastingly teaches "[a] method (and system) for managing and controlling allocation...of resources based on a guaranteed amount of resource and additional resources...as specified under a service level agreement (SLA)" (abstract) that uses "a service level metric, the amount of

allocated resources, and **the inbound traffic rate**, for defining the state of the current service level (M,N,R) for each customer" (col. 2, ll. 24-27), and Goldszmidt provides as examples of bounds for service level metrics "(1) the bound on the **server resource utilization**...; (2) the bound on the **average server response time**...; and (3) the bound on the **server response time percentile**" (Col. 3, ll. 30-34). Moreover, Brichta contrastingly describes "monitoring product manufacturing or service delivery" (col. 1, ll. 34-36), and Chen contrastingly describes running a user load simulation test to measure and tabulate "[r]esponse times for the completion of the generated and communicated tasks...assess server performance under a certain client load...[and] determine the number of users that a server can adequately handle." (Col. 4, ll. 60-65). None of the descriptions of monitoring an inbound traffic rate, a server resource utilization, average server response time, product manufacturing, business service delivery, and response times for the completion of the generated and communicated tasks, as variously provided in Goldszmidt, Brichta, and Chen, correspond to monitoring **a throughput ratio of output transactions to input transactions of computers that are currently allocated to a user** to compare the monitored throughput ratio with a requested load condition, as required by claim 29. For at least this reason, claim 29 is patentable over the cited references. In yet another example, for at least similar reasons to those discussed above, none of the cited references teach or suggest "if...**the monitored throughput ratio**...indicates that the computers currently allocated to the user are overloaded, allocating at least one of said at least one idle computer to the user," as also required by claim 29.

For at least these reasons, Applicants respectfully submit that Goldszmidt, either alone or in combination with Brichta and/or Chen, fails to teach, disclose, or suggest each and every limitation of claim 29. Where an independent claim is nonobvious under 35 U.S.C. §103, then any claim depending therefrom is nonobvious. *In re Fine*, 5 U.P.S.Q.2d 1596, 1598 (Fed. Cir. 1988). Because claim 30 directly depends from claim 29, Applicants respectfully submit that Goldszmidt, either alone or in combination with Brichta and/or Chen, does not render obvious claim 30 for at least the reasons set forth above that it does not render obvious claim 29, and that claim 30 is also now in condition for allowance.

Therefore, Applicants respectfully submit that the present invention as claimed is distinguishable and thereby allowable over the prior art of record.

Conclusion

In view of all the above, Applicants respectfully submit that certain clear and distinct differences as discussed exist between the present invention as now claimed and the prior art references upon which the rejections in the Office Action rely. These differences are more than sufficient that the present invention as now claimed would not have been anticipated nor rendered obvious given the prior art. Rather, the present invention as a whole is distinguishable, and thereby allowable over the prior art.

Favorable reconsideration of this application as amended is respectfully solicited. Should there be any outstanding issues requiring discussion that would further the prosecution and allowance of the above-captioned application, the Examiner is invited to contact the Applicants' undersigned representative at the address and phone number indicated below.

Respectfully submitted,

Nicholas B. Trenkle
Registration Number 54,500

Juan Carlos A. Marquez
Registration Number 34,072

STITES & HARBISON PLLC
1199 North Fairfax Street
Suite 900
Alexandria, VA 22314-1437
(703) 739-4900 Voice
(703) 739-9577 Fax
Customer No. 38327

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